

Policies and Procedures

For Administration of the Health Care Provider Insurance Availability Act Adopted by the Health Care Stabilization Fund Board of Governors

Introduction

The Kansas Health Care Stabilization Fund was created in 1976 by enactment of the Health Care Provider Insurance Availability Act (HCPIAA). The HCPIAA is found in *Kansas Statutes Annotated* 40-3401 through 40-3423.

For almost two decades the Fund was administered by the Commissioner of Insurance. The Legislature transferred authority and responsibility for administering the HCPIAA to the Health Care Stabilization Fund Board of Governors in 1995.

Members of the Board of Governors are appointed by the Commissioner of Insurance. The Board appoints an Executive Director to manage the agency on behalf of the Board, and to assure compliance with policies and procedures adopted by the Board.

General Policy Statements

Subsection (c) of K.S.A 40-3403 enumerates the various circumstances under which the Fund is liable for payment. Generally, the Board will authorize payment for the amount in excess of \$200,000 for court approved claims that are the result of personal injury actions against health care providers. The Board will authorize payment in excess of the primary coverage, but not to exceed the amount of excess coverage purchased by the health care provider. The health care provider must choose one of three levels of Fund excess coverage, but cannot exceed \$800,000 per occurrence and \$2.4 million annual aggregate.

The Board will not authorize payment for any claim that is not the result of a personal injury action; nor will the Board authorize payment for any claim against an active health care provider that is not covered by the health care provider's basic professional liability insurance policy.

If a health care provider is self-insured for the required basic professional liability insurance, the Board will authorize payment for only those claims attributable to professional services rendered by a service or facility that is recognized as a constituent part of the health care provider's self-insured entity. If the health care provider is a medical care facility owned by a self-insured health care system, the Board will authorize payment for only those claims attributable to a medical care facility that is recognized as a medical care facility owned by the self-insured health care system. Procedures for becoming self-insured, and for updating recognized services and facilities are a separate part of this document.

Health care providers must select one of three Fund coverage options described in K.S.A. 40-3403. In the event that a health care provider wishes to increase the level of coverage under the Fund, or wishes to make any other request requiring Board action, a written

request to the Board must be received at least one week prior to the next scheduled meeting of the Board.

Consistent with K.S.A. 65-2803, if a health care provider is in compliance with K.S.A. 40-3402 and the health care provider's license expires or is otherwise cancelled and then reinstated within six months, the Health Care Stabilization Fund coverage selected in accordance with K.S.A. 40-3403 will remain in effect as long as the following conditions are met: (1) the reinstated license is a category of license that is subject to the provisions of K.S.A. 40-3402, (2) the basic insurance coverage is not terminated or otherwise interrupted, and (3) the health care provider has paid the appropriate surcharge to the Health Care Stabilization Fund.

If for some reason a health care provider is insured by more than one basic professional liability insurance policy, the Fund will be liable only once for any claim. If a health care provider has selected different levels of excess coverage for two or more policies of basic coverage, the Fund liability will be consistent with the excess coverage selected for the basic coverage policy that is liable for the claim.

Subsection (a)(2) of K.S.A. 40-3402 requires that insurers notify the Board of Governors of cancellation of basic coverage in a timely manner. In the event of late notice of cancellation of basic coverage by an insurer, the Board of Governors will consider the late notice to be beyond the health care provider's control. In such instances of late notice of cancellation, the Board will calculate the unearned Health Care Stabilization Fund surcharge based on the date the notice of cancellation was postmarked minus ten days. If the health care provider has become inactive and is no longer practicing in Kansas, the Board will determine the thirty-day time period during which a health care provider may purchase prior acts coverage from the Health Care Stabilization Fund Board of Governors based on the date the notice of cancellation was postmarked minus ten days.

Business Entities

Those health care providers that are subject to the HCPIAA are required to obtain professional liability insurance and participate in capitalizing the Fund by paying premium surcharges. The only exception is when a health care provider obtains permission from the Board to become self-insured. Enforcement of this requirement is delegated to each of the various licensing agencies. A health care provider cannot become licensed, or renew a license, unless the provider has purchased the necessary insurance coverage or has established itself as a self-insured health care provider.

Health care providers that organize a business entity for the purpose of rendering health care services are also required to purchase professional liability insurance on behalf of the business organization, and are required to pay a premium surcharge to the Fund for the statutory excess coverage. But because business entities organized by health care providers are not separately licensed, there is no enforcement mechanism. For this reason, it becomes the responsibility of the organizers of a health care business entity to

purchase professional liability insurance and inform the Board of the existence of the business entity.

Professional Corporations A professional corporation incorporated by health care providers pursuant to K.S.A. 17-2709 and amendments thereto must submit to the Board: (a) a copy of the articles of incorporation including a statement of professional purpose; (b) a copy of the corporation's bylaws; and (c) a copy of a certificate from the licensing agency for each incorporator indicating that the incorporator is duly licensed and that the proposed corporate name has been approved.

Not-for-profit Corporations A not-for-profit corporation incorporated by health care providers to provide health care services in Kansas must submit to the Board: (a) a copy of the articles of incorporation including a statement of professional purpose; (b) a copy of the corporation's bylaws; and (c) a copy of a certificate from the licensing agency for each incorporator indicating that the incorporator is duly licensed and that the proposed corporate name has been approved.

Limited Liability Companies A limited liability company organized by health care providers to provide health care services in Kansas must submit to the Board: (a) a copy of the articles of organization including a statement of professional purpose; (b) a copy of the company's bylaws; and (c) a copy of a certificate from the licensing agency for each member of the company indicating that the member is duly licensed and that the proposed company name has been approved.

Partnerships A partnership formed by health care providers to provide health care services in Kansas must submit to the Board: (a) a copy of the partnership agreement or contract; and (b) a current list of the partners indicating their professional license numbers.

Self-Insured Health Care Providers

Eligibility for Self-Insurance Any health care provider or health care system that wants to become self-insured must meet the eligibility criteria prescribed in K.S.A. 40-3414 and amendments thereto.

Application for Certificate of Self-Insurance A health care provider that wants to become self-insured must submit a letter of intent to the Board at least six months prior to the date when the health care provider wants to become self-insured. If the health care provider is an individual professional, the letter must be signed by the health care provider. If the health care provider is a partnership, the letter must be signed by all partners. If the health care provider is a medical care facility or health care system, the letter must be signed by the legal representative of the governing authority. If the health care provider is a corporation or a limited liability company, the letter must be signed by the chairperson of the board of directors.

Within 60 days of the letter of intent to become self insured, the health care provider must submit to the Board the following information:

- (1) a copy of the health care provider's most recent audited financial statement;
- (2) a description of the health care provider's financial condition including any material changes after the most recent audited financial statement;
- (3) a copy of the minutes of the meeting of the governing authority which reflects approval of the creation of a separate segregated fund for payment of claims, or a copy of a resolution adopted by the governing authority authorizing creation of a separate segregated fund for payment of claims;
- (4) a statement of the amount of liquid assets to be reserved for settlement of claims or payment of judgments against the health care provider; and
- (5) a description of the procedures that will be used by the health care provider in the event a claim is filed against the health care provider including: (a) the method of reporting claims to the Board of Governors; (b) the positions and names of individuals responsible for reporting claims to the Board of Governors; and (c) the methods that will be used by the health care provider to investigate and evaluate claims.

Within 90 days of the letter of intent to become self insured, the health care provider must submit to the Board the following information:

- (1) a history of claims for the previous five years identifying paid losses for closed claims and loss reserves for open claims;
- (2) an independent actuary's report indicating recommended reserves for self insurance of the health care provider including reserves for prior acts; and
- (3) a copy of the liability insurance policy or declarations page providing insurance coverage for employees who are not health care providers, or an explanation of separate self insured coverage independent of the self-insurance of health care providers.

Quarterly Reports of Reserves A self-insured health care provider must submit a statement every three months which reports the current balance in the segregated fund established for payment of claims.

Notice of Material Change If a self insured health care provider experiences a material change in its ownership, financial condition, or procedures for handling self-insured professional liability claims, the health care provider must notify the Board of the material change within 30 days of knowledge of the change.

Renewal of Certificate of Self Insurance A self-insured health care provider must annually resubmit updated information described above (except for the letter of intent) in order to maintain continuous self-insured status.

Revocation of Certificate of Self Insurance The Board may revoke a certificate of self insurance for:

- (1) failure to pay the premium surcharge required by subsection (c) of K.S.A. 40-3402 and amendments thereto;
- (2) failure to submit quarterly statements of reserves;
- (3) failure to annually resubmit the required information described above; or
- (4) a change in the ownership, financial condition, or procedures for handling claims.

Requests for Records or Other Information

Records Custodian The Chief Attorney is the official custodian of records maintained by the Health Care Stabilization Fund (HCSF) Board of Governors. The Executive Director will act as official custodian of records in the Chief Attorney's absence. The official custodian will provide guidance to the Board's staff regarding the Kansas Open Records Act and will decide whether records in the custody of the Board are open records. The official custodian may authorize categories of records that can be routinely provided to requestors. The official custodian may designate a member of the Board's staff to respond to routine requests for open records. Open records will not be removed from the Board's office location, but copies of open records may be removed. Any person requesting on-site review of open records must provide photo identification prior to examination of the open record. The official custodian or designee will supervise all on-site examination of open records.

Response to Requests The HCSF Board of Governors will respond to a written request for a public record within three business days following the date of the request. A request for information received via facsimile or electronic mail message may be considered a written request if other criteria are met. A written request must identify the name and address of the requestor and must clearly identify the specific record requested. A request for records received via telephone communication will not be considered sufficient to warrant a response. A request for electronic records stored in a database will not be made available unless the requestor clearly identifies one or more individual data records that can be readily converted to a digital image or a printed page. If for some reason the request cannot be accommodated within the three-day period, the requestor will be informed of the delay and the reason. If the request is for information that is not a public record, the requestor will be informed within three business days following the date of the request that the request is denied.

Records and Information Not Available to the Public Records that are not subject to the Kansas Open Records Act include, but are not limited to: (1) medical records or other personally identifiable health care information, (2) personnel records pertaining to employees of the Board, and (3) attorney work product or any other records pertaining to civil litigation, criminal prosecution, or administrative adjudication. Such information will not be made available for public examination nor will copies be reproduced for any requestor.

Fees Response to a request for one or more copies of a public record will be contingent upon payment of the appropriate fee by the requestor. The official custodian may waive the payment of a fee when the request is submitted by a health care provider that has paid the appropriate HCSF premium surcharge. A single image of a record that can be attached to an electronic mail message may also be provided without charge. Otherwise, the following fees will be collected from the requestor.

Staff Time for Record Retrieval:	\$4.00 per quarter hour
Custodian Time for Record Review:	\$16.00 per quarter hour
Photocopies:	\$0.25 per page
Postage:	U.S. Postal Service Rate
Fax Transmission:	
Local Transmission	\$0.25 per page
Long Distance Transmission	\$0.50 per page

Definition of Terms and Phrases

Applicable to Policies and Procedures

Adopted by the Health Care Stabilization Fund Board of Governors

Statutory definitions for the Health Care Providers Insurance Availability Act are contained in K.S.A. 40-3401. The following definitions are for clarification of legislative intent, and are established by the HCSF Board of Governors for purposes of policies and procedures adopted by the Board.

“Board” means the Health Care Stabilization Fund Board of Governors.

“Fund” means the Health Care Stabilization Fund.

“Health care system” means an organization that owns two or more licensed medical care facilities located in Kansas.

“Medical care facility” means:

- (1) a licensed ambulatory surgical center located in Kansas as further defined in K.S.A. 65-425 and amendments thereto;
- (2) a licensed critical access hospital located in Kansas as further defined in K.S.A. 65-468 and amendments thereto;
- (3) a licensed general hospital located in Kansas as further defined in K.S.A. 65-425 and amendments thereto;
- (4) a licensed recuperation center located in Kansas as further defined in K.S.A. 65-425 and amendments thereto; or
- (5) a licensed special hospital located in Kansas as further defined in K.S.A. 65-425 and amendments thereto.

“Personal injury action” means a civil action for personal injury or death arising out of the rendering of or the failure to render professional services.